

## CHAPTER 2 GENERAL DEFINITIONS

[Prior to 1/13/88, see Civil Rights 240—1.1(601A)]

### 161—2.1(216) Definitions.

**2.1(1)** Wherever “Act” is used in rules of the commission it shall mean the Iowa Civil Rights Act of 1965, as amended (Iowa Code chapter 216).

**2.1(2)** Unless indicated otherwise, the terms “court,” “person,” “employment agency,” “labor organization,” “employer,” “employee,” “unfair practice,” or “discriminatory practice,” “commission,” “commissioner,” and “public accommodation” shall have the same meaning as set forth in Iowa Code chapter 216.

**2.1(3)** The term “chairperson” shall mean the chairperson of the Iowa civil rights commission; and the term “commissioner” shall mean any member, including the chairperson, of the commission. The vice chairperson of the commission shall serve, in the absence of the chairperson, as acting chairperson; and, in the absence of the chairperson, the vice chairperson shall have all the duties, powers and authority conferred upon the chairperson by the Act and commission rules. At all times it shall be necessary that a quorum be present before the commission can transact any official business.

**2.1(4)** The term “complainant” shall mean the person, as defined in Iowa Code subsection 216.2(11), who makes a complaint of discrimination with the commission.

**2.1(5)** The term “executive director” shall mean an employee of the commission, selected by and serving at the will of the governor, who shall have the duties, powers and authority conferred upon the director by law.

**2.1(6)** Except as provided in paragraph “b,” the term “issuance” shall mean mailing by U.S. certified mail a document or letter indicating a decision or other administrative action of the commission. The date of issuance of a decision or an administrative action of the commission shall be the date the commission mails by U.S. certified mail a document or letter indicating the decision or action.

*a.* Except as provided in paragraph “b,” the verb “issue” shall mean to mail by certified mail a document or letter indicating a decision or other administrative action of the commission. The date an action or decision is “issued” shall be the date the commission mails by U.S. certified mail a document or letter indicating the decision or action.

*b.* When used to refer to a decision to administratively close a case, the term “issuance” and the verb “issue” can mean either the mailing of the document indicating administrative closure by regular mail or the mailing of that document by certified mail. The date an administrative closure is issued is the date the administrative closure is mailed to the complainant. Where mailing is by regular mail, the date of mailing is presumed to be the date on the cover letter accompanying the administrative closure unless this date is shown to be in error.

When used to refer to a subpoena, the term “issuance” and the verb “issue” shall each mean the signing of the subpoena by the issuing authority. The date a subpoena becomes effective is the date service is completed.

**2.1(7)** The term “respondent” shall mean the person, as that term is defined in Iowa Code subsection 216.2(11), against whom the complaint of discrimination is made with the commission.

**2.1(8)** The term “right to sue” shall mean the release issued by the commission stating that the complainant has a right to commence an action in the district court. The term “right to sue” is the same as the “release” or “administrative release” described in Iowa Code section 216.16 and these terms may be used interchangeably.

**2.1(9)** The term “verified” shall mean (a) sworn to or affirmed before a notary public, or other person duly authorized by law to administer oaths and take acknowledgments, or (b) supported by an unsworn declaration which recites that the person certifies the matter to be true under penalty of perjury, states the date of the statement’s execution and is subscribed by the person. Such an unsworn declaration may be in substantially the following form: “I certify under penalty of perjury and pursuant to the laws of the state of Iowa that the preceding is true and correct. Executed on (date). (Signature).”

**2.1(10)** Final actions. The following procedures shall constitute final actions of the commission:

a. The term “administratively closed” shall mean that, in the opinion of the investigating official, no useful purpose would be served by further action by the commission respecting a complaint, such as where the commission staff has not been successful in locating a complainant after diligent efforts, where the respondent has gone out of business, where a right to sue letter has been issued, or where, after a probable cause decision has been made, it is determined that the record does not justify proceeding to public hearing.

b. The term “no jurisdiction” shall mean that the alleged discriminatory act or practice is not one that is prohibited by the Act or where the complaint does not conform to the requirements of the Act.

c. The term “no probable cause finding” shall mean the procedure by which a complainant and respondent are notified that the investigating official has found that there is no probable cause to believe that discrimination exists after reviewing an investigation of a complaint.

d. The term “satisfactorily adjusted” shall mean that the complainant has indicated in writing that the complaint has been resolved to the satisfaction of the complainant, and that no further action is desired from the commission. Whenever the offer of adjustment by a respondent is acceptable to the investigating official, but not to the complainant, the commission may close the case as satisfactorily adjusted. In a case which has been determined by the commission as having probable cause, the respondent’s signature must be obtained before the case can be considered to be satisfactorily adjusted.

e. The term “successfully conciliated” shall mean that a written agreement has been executed on behalf of the respondent, on behalf of the complainant, and on behalf of the commission, the contents of which are designed to remedy that alleged discriminatory act or practice and any other unlawful discrimination which may have been uncovered during the course of the investigation.

f. The term “withdrawn” shall mean that a complainant has indicated in writing the desire that no further action be taken by the commission regarding the complaint.

**2.1(11)** Construction of rules. The rules and regulations promulgated by the Iowa civil rights commission shall be liberally construed to effectuate the purposes and provisions of Iowa Code chapter 216.

**2.1(12)** The term “terms and conditions of employment,” shall include but is not limited to medical, hospital, accident and life insurance or benefits, leave, vacations, and other terms, conditions, and privileges of employment.

**†2.1(13)** The term “injury” shall mean a loss of pecuniary benefit, rights, or any offense against a person’s dignity.

These rules are intended to implement Iowa Code chapter 216.

[Filed 4/20/72; amended 7/9/74, 10/7/74, 3/14/75]

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[Filed 3/28/79, Notices 12/13/78, 1/10/79—published 4/18/79, effective 5/23/79\*]

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[Filed 5/24/84, Notice 4/11/84—published 6/20/84, effective 7/25/84]

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[Filed 1/29/93, Notice 11/25/92—published 2/17/93, effective 3/24/93\*\*\*]

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\*The Administrative Rules Review Committee at its May 21, 1979, meeting delayed the effective date of 240—subrules 1.1(7) to 1.1(9), 1.3(1), 1.8(2) and rules 1.16 and 1.17 70 days.

\*\*The Administrative Rules Review Committee at its February 11, 1988, meeting delayed the effective date of subrule 2.1(8) 70 days.

\*\*\*Effective date of 161—2.1(4), 2.1(6) to 2.1(11) delayed 70 days by the Administrative Rules Review Committee at its meeting held March 9, 1993; delayed until adjournment of the 1994 Session of the General Assembly by this Committee May 11, 1993.

†Objection to 2.1(8) [Prior to 1/13/88 numbered as 1.1(9)] reimposed by ARRC 4/20/88, republished 5/4/88, see full text of objection on following page.

## OBJECTION

2.1(13)

On July 11th, 1979, the administrative rules review committee voted the following objections:

The committee objects to ARC 0192, item 1, appearing in Vol. 1, IAB 23 (4-18-79), relating to the definition of terms, on the grounds these provisions are beyond the authority of the commission and unreasonable. Specifically, the committee is concerned with subrules 1.1(8) and 1.1(9) appearing under item 1. Subrule 1.1(8) provides:

The term “retirement plan and benefit system” as used in section 601A.12 of the Code relates only to the discontinuation of employment pursuant to the provisions of such retirement plan or system. A retirement plan or benefit system shall be limited to those plans or systems where contributions are limited to those plans or systems where contributions are based upon anticipated financial costs of the needs of the retiree.

It is the opinion of the committee this subrule exceeds the authority of the commission in that it is an overbroad interpretation of §601A.13, the Code. That section in essence exempts from the provisions of the Act retirement plans or benefit systems which discriminate on the basis of age or sex, unless the plan is a “mere subterfuge”. The exemption does not appear limited to plans or systems “relating only to the discontinuation of employment” or those “where contributions are based upon the anticipated financial costs of the retiree” as the subrule provides. Under the subrule, a plan or system which fails to meet either of the above criteria would apparently automatically be considered unfair discrimination. If the General Assembly had intended this result it would have so provided within the Act.

It is further the opinion of the committee subrule \*1.1(9) defining as “injury”, for which damages may be awarded, an offense against a person’s dignity, is unreasonable in that it provides no ascertainable standard to determine what damage the offended party has suffered.

Under the provisions of §601A.15(8) “a”(8) the commission clearly has the authority to award damages for an injury. The committee believes this term to mean that the party has been harmed in some way that damage received can be measured and appropriate recompense awarded for that damage. Dignity, like beauty, is in the eye of the beholder. Absent a showing that physiological or psychological damage has resulted from an “offense against a person’s dignity”, it appears impossible to accurately measure the financial equivalent of such an injury or to award appropriate damages.

\*Renumbered as 2.1(8), IAC 1/13/88; 2.1(8) renumbered as 2.1(13), IAC 2/17/93.  
Note: Iowa Code chapter 601A renumbered as chapter 216 in 1993 Iowa Code.